

### REMARKS

Upon entry of the above amendments, this Application will contain claims 41-48 and 56-62 pending and under consideration. Claims 1-29, 30-40, and 49-55 were previously canceled. In the present submission, claims 41, 43 and 57 have been amended and new claims 61 and 62 have been added. In the latest Office Action, dated January 12, 2004 claims 41-48 and 56-60 were rejected as non-statutory double patenting of claim 5 of US 6,537,496. Claims 41-43, 46-48, and 57-60 were rejected under 35 USC §103(a) over Good et al. (US 6,194,224) in view of Dreyfus (US 2,063,987). Claim 57 was allowed, and claims 44 and 45 were considered to be allowable. For the reasons more fully disclosed below, it is believed that the claims are patently distinct from these references. Reconsideration leading to timely allowance of this application is respectfully requested.

#### Non Statutory Double Patenting Rejection

Claims 41-43, and 57-60 were rejected under the judicially created doctrine of obviousness type double patenting over claim 5 of US 6,537,496. The undersigned files concurrent with this Response a Terminal Disclaimer. Withdrawal of this rejection is requested.

#### Rejections Under 35 USC §103(a)

Claims 41-43, 46-48 and 57-60 were rejected under 35 USC §103(a) over Good et al. (US 6,194,224) in view of Dreyfus (US 2,063,987).

Claim 41 has been amended to recite that the test strip includes detection layers that are directly contacted by an overlay made of a spreading material. Support for the amendment can be found in the application at ¶ 68 and in Figs. 1-6, (Publication 2003/0031592). It is believed that claim 41 as amended is patentably distinct from the cited references.

Good et al. does not disclose or make obvious a test strip as presently claimed. In Good, the test strip includes 1) a sample well 12 that contains a fatty acid sarcosinate 2) an adjacent reagent zone 22, and 3) a test zone 23. (Good, et al., col. 4, lines 8-22, and Figs 1-3.) (The test strip in the plastic casing similarly includes a sample receiving well, a chemical reagent layer 62, and a test results layer 65. (Good et al., col. 7, lines 13-23, and Figs 4-8).) In both embodiments, the reagent zone or layer separates the sample well from the test zone. In contrast, the presently claimed invention does not require any intervening layer(s) between the detection layer and the spreading layer. The detection layer includes the reagents necessary to perform the selected analysis of the

analyte. (Published Application, ¶70.) As noted above this is not disclosed or made obvious by Good et al.

Dreyfus does not make up for the deficiencies of Good et al. Dreyfus merely discloses that various sarcosinates are of value for aqueous treatments including wetting. Dreyfus does not disclose or teach any thing about test strips as presently claimed.

The Applicant submits that the combined references Good et al. and Dreyfus do not make the invention claimed in independent claim 41 obvious. Therefore, withdrawal of the rejections over claims 41 and of claims 42, 43, and 46-48, which depend from claim 41, is respectfully requested.

Claims 57-60 were rejected over Good in view of Dreyfus. Claim 57 has been amended to recite that the overlay elements that can be displaced freely relative to the test fields. Support for this amendment can be found in the published application at ¶72 which states in part that: "[T]he overlay of the spreading material according to the invention is composed of one or several flat-shaped overlay elements which are attached to the flexible test strip in such a way that at least a part of their surface [the overlay] can move freely relative to the surface of the object covered by this part". Consequently it is believed that this amendment does not add new matter.

Good et al. does not disclose or make obvious a test strip that includes an overlay material [that] can be displaced freely relative to the detection layer as claimed in claim 57. As noted in the previous Response submitted by the Applicants, the test strip of Good requires that the sample receiving zone 21, the reagent zone 22, the test zone 23, the control zone 24, and the liquid sink zone 25 are all encased within the upper and lower layers 31 and 32 of the plastic sheath 30. (Good et al. col. 4 lines 8-53; col. 5, lines 28-37 and Figs. 1-3.) Similarly, for Good's alternative embodiment, "the layers preferably are bound together by an adhesive in a manner that does not interfere with fluid flow between the layers." (Good et al., col., 7, lines 20-23.) Consequently it is believed that both embodiments, the layers in the test strip are bound together, and therefore, the sample receiving zone cannot move freely as presently claimed.

Dreyfus as been discussed above and does not make up for the deficiencies of Good et al.

Therefore, it is believed that Good et al. either considered singly or in combination with Dreyfus do not disclose or make obvious the test strip as recited in claim 57. Withdrawal of the rejections of claim 57 and for claims 58-60, which depend from claim 57, is requested.

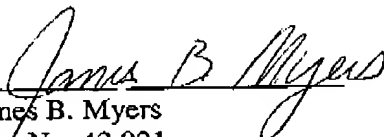
New Claims

New claims 61 and 62 have been added. Support for claim 61 can be found in the application in claims 41, 42, and 44. Support for claim 62 can be found in claim 44. Claims 44 and 45 were objected to for depending upon a rejected base claim but were considered to be allowable if rewritten as an independent claim and include all the limitations of the base claim and any intervening claims. It is believed that new claims 61 and 62 are allowable.

Conclusion

In view of the foregoing, the Applicant respectfully submits that the cited references, considered either singly or in combination, do not disclose or make obvious the claimed invention. Accordingly, reconsideration leading to withdrawal of all outstanding rejections for double patenting and under 35 USC § 103(a) and passage of this application containing claims 41-48 and 56-62 are requested. Additionally, the Examiner is invited to telephone the undersigned attorney if there are any questions about this submission or other matters that can be addressed in that fashion.

Respectfully submitted,

  
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